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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Cellular Service and Other Commercial
Mobile Radio Services in the Gulf of
Mexico

WT Docket No. 97-112

Amendment of Part 22 of the
Commission's Rules to Provide for Filing
and Processing of Applications for
Unserved Areas in the Cellular Service and
to Modify Other Cellular Rules

CC Docket No. 90-6

REPLY COMMENTS OF BACHOW/COASTEL, L.L.C.

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SUMMARY

The Commission's *Second Further Notice of Proposed Rulemaking* in Docket No. 97-112 and CC Docket No. 90-6 ("*Notice*") is supposed to address the U.S. Court of Appeals for the District of Columbia Circuit's (the "Court's") remand of the Commission's previous attempt to modify its rules for regulation of cellular service in the Gulf of Mexico. As Bachow/Coastel, L.L.C. ("Coastel") stated in its Comments, the Commission *Notice* fails to adequately address the concerns raised by the Court. In addition, the proposals contained in the *Notice* are unfairly skewed in favor of the land-based carriers and ultimately unnecessary. The comments filed in this proceeding by the other parties do not change these basic conclusions.

As Petroleum Communications, Inc. ("PetroCom") properly notes at the beginning of its comments, any Commission proposal to change the manner in which cellular service in the Gulf is regulated, must at a minimum, respect the existing rights of the Gulf carriers. While regulatory flexibility to allow Gulf carriers to overcome the obstacles posed by the unique characteristics of the Gulf should be the touchstone of this proceeding, the Commission proposed to entirely re-license the Gulf at the expense of the Gulf carriers. The land-based carriers that filed comments in this proceeding take the Commission's free-wheeling approach as an invitation to conduct a completely de novo review of how best to provide cellular service in the Gulf. Predictably, the land-based carriers unanimously decide that they are the best carriers to provide cellular service in the coastal waters of the Gulf.

The Commission's proposal to bifurcate the Gulf will ultimately lead to the ejection of the Gulf carriers from the proposed Coastal Zone and their replacement by the adjacent land-based carriers. The land-based carriers that commented in this proceeding can be divided into two main groups. First there are those that realize that the creation of some form of Coastal

Zone will ultimately result in them becoming licensed in the Gulf adjacent to their land-based markets. These carriers are happy to wait until the Coastal Zone becomes "unserved" by the Gulf carriers through deactivation of oil platforms. At that time, they will file Phase II applications because they will be the only potential licensees that have a place to locate transmitters.

The second group of commenters do not even want the minimal risk that somehow a mutually exclusive Phase II application will be filed for an unserved area off their coast. Instead, they simply want to be able to annex significant portions of the Gulf. Whether thinly disguised or overt, the positions taken by the land-based carriers all have the same goal -- an expansion of their land-based markets well into the Gulf at the expense of the current Gulf carriers. This simply is not acceptable.

Predictably, the land-based carriers uniformly seek to retain their de minimis extensions into the Gulf. The Commission rules currently provide that de minimis extensions, whether approved or the result of a consent agreement, are still secondary and subject to elimination when the extension area is served by the carrier whose market is the recipient of the extension. There is no reasonable argument that extension into the Gulf by land-based carriers should supersede the rights of the Gulf carriers to provide service within their own markets. The land-based carriers knew, or should have known, when they placed their cells into operation that extensions into the Gulf are secondary to the Gulf carriers' coverage of the same area. The Commission must affirm its current rule and assure that all contour extensions into the Gulf by land-based carriers remain secondary to the Gulf carriers' service to the same area.

Coastel joins all of the other commenters in opposing the use of a hybrid propagation formula to depict SABs of cellular cells that extend over the Gulf. It is universally acknowledged that signals carry further over water than over land. As a result, any uniform propagation formula that combines the land and water formulas will favor land-based carriers over Gulf carriers. However, the answer lies not with the creation of yet another formula, but instead with the Gulf carriers' proposal that land-based cell sites located within 35 miles of the coastline should be depicted using the water-based propagation formula so that the actual size of the land carriers extensions into the Gulf are shown and only truly "unserved" areas in the Gulf are reflected.

All of the land-based carriers that commented in this proceeding also predictably oppose allowing the Gulf carriers to place a transmitter in their markets without their consent. As stated in Coastel's comments, the Commission's proposal is not really a change in current Commission policy. The effect under both the current rule and the proposed rule is to prohibit Gulf carriers from using land-based transmitters. The key to resolving the unique situation in the Gulf is proper handling of land-based transmitters by Gulf carriers. Unique problems require unique solutions. In this case, the solution must involve land-based transmitters by Gulf carriers.

Coastel presents a simpler, more efficient solution that responds to the Court's Remand and serves the public interest objectives of the Commission. First, The Commission should conclusively depict the boundary between the Gulf and the adjacent land markets to avoid future conflicts regarding the exact location of the boundary. Second, The Commission should maintain the GMSA as the CGSA of the Gulf carriers, but allow land-based carriers to have certain limited de minimis extension rights. Third, any unserved area in the coastal waters of

the Gulf should be addressed by allowing Gulf carriers to place transmitters on land under certain conditions. Fourth, land-based carrier cell sites that project a signal over Gulf waters must be depicted using the Commission's water-based formula. Finally, the Commission must address the aspects of interconnection, enhanced 911, and universal service that uniquely impact on the Gulf carriers.

Coastel believes that these suggestions address both the Court's concern that the Gulf carriers have the regulatory flexibility to allow them to overcome the obstacles posed by the unique characteristics of the Gulf, and the Commission's concern that cellular service be provided to currently unserved areas of the Gulf where there is sufficient demand to warrant such service.

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REPLY COMMENTS OF BACHOW/COASTEL, L.L.C.

Bachow/Coastel, L.L.C. ("Coastel"), by its attorneys, herein replies to certain of the comments filed with respect to the Commission's proposals in its *Second Further Notice of Proposed Rulemaking* ("Notice") in the above-captioned docket.¹ As discussed in Coastel's Comments, the Commission's proposal to bifurcate the Gulf of Mexico (the "Gulf") service area for cellular telephone service into a Coastal Zone and an Exclusive Zone is not responsive to the United States Court of Appeals for the District of Columbia Circuit's (the "Court's") remand directive in Petroleum Communications, Inc. v. FCC,² is unfairly skewed in favor of the

¹Cellular Service, *Second Further Notice of Proposed Rule Making*, WT Docket No. 97-112, CC Docket No. 90-6 (rel. April 16, 1997).

²Petroleum Communications, Inc. v. FCC, 22 F.3d 1164 (D.C. Cir. 1994).

licensees in the cellular telephone service markets adjacent to the Gulf, and ultimately, is unnecessary. The comments filed in this proceeding do not change these basic conclusions.

I. The Vast Majority of Commenters Fail to Acknowledge, Much Less Address, the Court's Remand Order.

Former Section 22.903(a) of the Commission's rules defined cellular licensees' cellular geographic service area ("CGSA") boundaries as coterminous with areas of actual coverage. On May 13, 1994, the Court instructed the Commission to vacate former Section 22.903(a) of its rules, to the extent that it applied to Gulf licensees.³ In vacating the Commission's rule, the Court clearly rejected the Commission's notion to freeze the existing Gulf carriers into their then current service area boundaries because of the Commission's failure to properly consider the effect of the unique characteristics of the Gulf on the ability of the Gulf licensees to provide service therein and, stressed the need for regulatory flexibility to allow such licensees to provide cellular service in the Gulf. As the Commission acknowledges, the *Notice* is intended to address the Court's remand.⁴ However, as discussed at length in Coastel's Comments, the Commission's *Notice* fails to adequately address or respond to the concerns raised by the Court. Indeed, its proposals are actually more troublesome than its earlier attempt to apply former Section 22.903(a) to the Gulf licensees.

³Id.

⁴*Notice* at ¶ 25.

Encouraged by the Commission's free-wheeling approach to revisiting the entire Gulf cellular licensing scheme, as reflected in the *Notice*, virtually all of the land-based carriers that submitted comments ignore the Court's remand and, instead, make proposals that are blatantly geared towards redefining their adjacent land-based markets to annex significant portions of the Gulf, including areas where the Gulf carriers are already providing service. The comments of these land-based carriers are so eagerly imbued with self-interest as to be blind to the commenters' failure to account for the Court's remand. These range from unabashedly overt attempts to grab the entire Coastal Zone for the land-based carriers to more discrete attempts to support the proposed Coastal Zone with the knowledge that the Commission's proposal will result in the gradual ejection of Gulf carriers from the Coastal Zone and their replacement by the adjacent land-based carrier.⁵

Land-based carriers who filed comments have uniformly taken the *Notice* as an invitation to conduct a completely de novo review of how best to provide cellular service in the Gulf. Predictably, the land-based carriers unanimously decide that they are the best carriers to provide cellular service in the Gulf, despite the fact that the proposals they put forth flaunt the concerns raised by the Court and improperly seek to re-license and/or restructure the Gulf.

The failure of the commenters to acknowledge the Court's remand highlights their disregard for the Court's concern that the Commission implement rules that adequately address regulatory flexibility that Gulf carriers need to provide cellular service in the Gulf. Despite the fact that the Court rejected the notion of regulating the Gulf carriers without regard to their

⁵See infra at Section II.A.

rights as the cellular licensees in the Gulf, the land-based commenters heartily support any attempt to run roughshod over the Gulf carriers. The Court's remand order clearly makes such an approach unsustainable.

As Petroleum Communications, Inc. ("PetroCom") clearly stated at the beginning of its comments: "Any new rules the Commission adopts for cellular licensing in the GMSA [Gulf of Mexico Service Area] must accommodate the Gulf carriers' existing licensing rights."⁶ Regulatory flexibility to allow the Gulf carriers to overcome the obstacles posed by the unique characteristics of the Gulf should be the touchstone of this proceeding. Instead, by its proposals the Commission turns these unique characteristics against the Gulf carriers and attempts to totally re-license cellular service in a manner that deprives Gulf carriers of the long-term ability to serve significant coastal waters. Furthermore, the Commission's proposal promotes a de facto, if not de jure, annexation of such waters by the land-based carriers. This is clearly inconsistent with the Court's remand.

The few land-based carriers that mention the Court's remand do so only in passing, on their way to proposing that the Commission force the Gulf carriers out of the proposed Coastal Zone. For example, Palmer Wireless, Inc. ("Palmer") initially "acknowledges the necessity of this proceeding to properly consider the GMSA issues, as directed by the Court . . .," but then totally disregards the Court's directive.⁷ Palmer immediately puts forth a proposal that would force the Gulf carriers out of the proposed Coastal Zone and corral them in the proposed

⁶Comments of Petroleum Communications, Inc. ("PetroCom Comments") at 2, ¶ 3.

⁷Comments of Palmer Wireless, Inc. ("Palmer Comments") at 2.

Exclusive Zone at least 12 nautical miles from the coastline. Indeed, Palmer proposes to push the proposed Exclusive Zone out an additional 8 miles, for a total of 20 miles from the coastline. Likewise, while Radiofone, Inc. ("Radiofone") acknowledges that the "Gulf licensees' need for flexibility was amply shown by the record developed in *Petroleum Communications, Inc. v. FCC*," it then proposes to widen the proposed Coastal Zone to a minimum of 25 nautical miles.⁸

AT&T Wireless Services, Inc. ("AT&T Wireless") merely agreed with the Commission that the proposed "rule changes would adequately address the Gulf carriers'" concern that their unique circumstances require a more flexible CGSA definition.⁹ Finally, the comments of BellSouth Corporation demonstrate a complete misunderstanding of the Commission's vacated rule and the Court's remand order -- "The Commission's previous attempt to encourage these [Gulf] incumbents to provide service in the Coastal Zone was struck down by the D.C. Circuit."¹⁰ To the contrary, the Court struck down the Commission's prior rule because it failed to take into account the unique circumstances faced by carriers attempting to provide cellular service in the Gulf.

⁸Comments of Radiofone, Inc. ("Radiofone Comments") at 3-5.

⁹Comments of AT&T Wireless, Inc. ("AT&T Wireless Comments") at 4.

¹⁰Comments of BellSouth Corporation ("BellSouth Comments") at 7-8.

II. The Commission's Proposals Are Not Responsive to the Court's Remand, Are Unfairly Skewed In Favor of the Land-Based Carriers and Are Unnecessary

A. Bifurcation of the Gulf Will Ultimately Lead To The Ejection of the Gulf Carriers From the Proposed Coastal Zone and Their Replacement by the Adjacent Land-Based Carriers

In rejecting the Commission's attempt to confine the two Gulf carriers to their existing areas of actual reliable service, the Court agreed with the Gulf carriers that such rules were arbitrary and capricious. The Court concluded that the Commission had failed to provide a reasoned explanation for its requirement that Gulf carriers adhere to the same standard for definition of service areas that it adopted for use by land-based carriers and found the Commission's treatment of the differences between Gulf and land-based carriers to be "vexingly terse."¹¹ The Commission's current proposal to bifurcate the Gulf suffers from the same infirmity.

The Commission's bifurcation proposal not only freezes the existing Gulf carriers into their current service area boundaries ("SABs") within the proposed Coastal Zone but virtually assures the gradual erosion of their provision of cellular service within that zone. By deleting any previously served areas that become "unserved" as a result of circumstances beyond the Gulf carriers' control, the Commission guarantees that these areas will ultimately become part of the adjacent land-based carrier's service area. Those circumstances -- the deactivation or relocation of the oil drilling platforms upon which the Gulf carriers are dependent for placement of their cellular transmitting equipment -- were at the heart of the Court's focus when it

¹¹Petroleum Communications, Inc. v. FCC, 22 F.3d at 1172.

chastised the Commission for attempting to blindly apply to the Gulf carriers the same regulatory scheme that it intended to apply to the land-based carriers, without first considering the obstacles posed by the unique characteristics of the Gulf.

The Commission's only effort to satisfy the Court's concern that Gulf carriers be granted a certain amount of flexibility with respect to their service areas in light of the unique challenges associated with providing cellular service in the Gulf is to fence the Gulf carriers into a proposed Exclusive Zone 12 nautical miles offshore.

We also tentatively conclude that a GMSA Exclusive Zone should be created within which the existing Gulf carriers may move their transmitters freely and expand or modify their systems without being required to file applications or obtain prior approval. Under this proposal, we would not accept applications for Gulf Systems from anyone other than the two original Gulf carriers, except in the case of assignment or contract extension. The exclusivity will extend for the license term and can be renewed. We believe that creating the Exclusive Zone addresses the court's concern that Gulf carrier be granted a certain amount of flexibility with respect to their service areas in light of the unique challenges associated with providing service in the Gulf.¹²

The Commission's reasoning entirely ignores what will happen to the Gulf carriers in the proposed Coastal Zone, an area that such carriers are currently authorized to serve. As discussed in Coastel's Comments, the Commission's proposal, if adopted, will likely be equally if not more troubling to the Court as was the Commission's rule that it vacated. Instead of confining the Gulf carriers to their actual service areas within the entire Gulf, the Commission's proposal to bifurcate the Gulf will corral the Gulf carriers in the proposed Exclusive Zone and

¹²Notice at ¶ 28.

freeze Gulf carriers into the areas within the proposed Coastal Zone that they currently serve, with the understanding that when the Gulf carriers lose any Coastal Zone coverage for any reason, the lost coverage area will be deleted from their CGSA. Thus, rather than attempt to provide the necessary regulatory flexibility to allow existing Gulf carriers to overcome the unique obstacles to the provision of cellular service in the Gulf, the Commission instead revisits the entire Gulf cellular licensing scheme, effectively driving the Gulf carriers away from the coastline, out of significant coastal waters and confining them to the proposed Exclusive Zone. The price to the Gulf carriers of the Commission's creation of an Exclusive Zone within which the existing Gulf carriers have complete flexibility of movement -- the loss of 12 nautical miles of Gulf waters from the coast outward along the entirety of the coastline -- is entirely too steep.

The Court rejected the Commission's earlier action for failing to consider that the unique characteristics of the Gulf require the Commission to regulate the Gulf carriers in a flexible enough manner to allow them to serve the market that they have been licensed to serve. The Court's concerns in this regard are well known to the Commission:

The consequences of the Commission's new rule for Gulf licensees appeared to be dire. Limited as [Gulf carriers] are to water-borne transmitters, petitioners go only where oil and gas sites permit. The new rule freezes petitioners' service areas as the status quo. When oil and gas rigs are deactivated, petitioners must close up shop. If new rigs do not open within reasonable proximity to the old, petitioners effectively lose the ability to serve part or all of their service areas.¹³

¹³Petroleum Communications, Inc. v. FCC, 22 F.3d at 1173.

The Commission confuses the Court's recognition of the Gulf carrier's need for flexibility by allowing such flexibility in a limited area of the Gulf that is 12 nautical miles off any domestic coast and thus would have no common boundary with any other licensed cellular market. The difficulty posed by the Gulf, which the Commission seems unwilling to tackle, is that the very need for flexibility in providing cellular service to the Gulf makes it impossible to "draw lines in the water" and freeze the Gulf carriers into a specific area of the Gulf, whether such area is defined by their current service areas or some artificially established zone. The Commission's proposal makes the unique characteristics of the Gulf work against the Gulf carriers instead of affording them the flexibility they need to serve those areas. As discussed below, any Commission concern regarding the adequacy of cellular service in the proposed Coastal Zone is a result of the unique characteristics of the Gulf and the Commission's own prohibition against Gulf carriers placing transmitters on land without the affected land carrier's consent.

Granting to the Gulf carriers the exclusive rights to serve the Exclusive Zone is an empty gesture. Both Gulf carriers currently provide the maximum service possible in the proposed Exclusive Zone, based on the number and location of drilling platforms in that area. While there is "unserved area" in the proposed Exclusive Zone, this area will remain unserved until a drilling platform is located in the area. Marine traffic in this area is considerably less than in the coastal waters of the Gulf. In any event, it would be impossible for any other carrier to file a Phase II unserved area application for any area within the Exclusive Zone because there is no place to locate a transmitter, either on land or in the Gulf, that could serve additional area in the proposed Exclusive Zone, without overlapping existing Gulf SABs.

The Commission's Phase II unserved area licensing procedures have heretofore been applied only in sparsely populated and less traveled areas at the fringes of cellular markets. These areas are unserved largely because the cellular carriers in those markets have opted not to serve them. In the Gulf situation, that is certainly not the case. It is the unique characteristics of the Gulf -- namely the unavailability of oil platforms upon which to place transmitting equipment -- coupled with specific Commission policies, that has left certain areas unserved within the Gulf.

Although the commenters that address the Commission's proposal to bifurcate the Gulf of Mexico MSA are split relatively evenly with respect to their support or opposition, all but PetroCom and Coastel exhibit an "area grab" mentality. Completely ignoring the Court's remand order, the land-based carriers are using the proposed rulemaking as an opportunity to expand their cellular service areas well into the Gulf of Mexico.

Some of these carriers, such as Vanguard Cellular System ("Vanguard"), Texas RSA 20B2 Limited Partnership ("Texas 20B2"), ALLTEL Mobile Communications, Inc. ("ALLTEL"), Southwestern Bell Mobile Systems, Inc. ("Southwestern Bell Mobile"), and 360° Communications Company ("360°"), favoring the 12-nautical mile proposal, and Palmer and Radiofone, favoring a 20-25 nautical mile version, support the creation of some form of Coastal Zone because they realize, as Coastel has argued, that only they will have any realistic opportunity of being licensed for any "unserved" area in the Gulf's coastal waters off of their

coasts.¹⁴ The Commission's proposal would, over time, all but award the Coastal Zone to the land-based carriers in markets adjacent to the Gulf. As discussed, the Gulf carriers initially would be prevented from serving any more of the Coastal Zone than they already serve. Then, as the Gulf carriers lose service area in the Coastal Zone due to the movement or deactivation of oil platforms from which service to such area is provided, new areas will become available for Phase II licensing. Since the only way to serve the newly "unserved area" would be from a land-based transmitter and the land-based carriers control who can place land-based transmitters in their market, only the land-based carriers in the adjacent land market would even be able to file a Phase II unserved area application for the area in question. Even a small dose of reality reveals how the Commission's proposal is severely skewed in favor of the land-based carriers.

Other land-based carriers, such as AT&T Wireless, and MobileTel, Inc. ("MobileTel") (favoring extension of land-based MSA/RSA boundaries 12 miles into the Gulf) and, most blatant of all, GTE Service Corporation ("GTE") (favoring the extension of land-based cellular provider networks from the shore for most of the Gulf of Mexico and 50 miles from the shore in Florida) do not even want the minimal risk that somehow a mutually exclusive Phase II application will be filed for an unserved area off their coasts.¹⁵ These land-based carriers

¹⁴See, e.g., Comments of Southwestern Bell Mobile Systems, Inc. at 7-9; Comments of ALLTEL Mobile Communications, Inc. at 2-4; Comments of 360° Communications Company at 5-8.

¹⁵Comments of MobileTel Inc. ("MobileTel Comments") at 2-4; Comments of GTE Service Corporation ("GTE Comments") at 2-8, Comments of AT&T Wireless Services, Inc. at 4-6.

promote an overt annexation of anywhere from 12 to 50 nautical miles of Gulf waters as part of their land-based market. Whether thinly disguised or overt, the positions taken by the land-based carriers all have the same goal -- an expansion of their land-based cellular markets well into the Gulf at the expense of the current Gulf carriers.

While Coastel concurs with many of the positions taken by PetroCom in this proceeding, it opposes PetroCom's request that the Commission create an Eastern Zone in the Gulf within which it alone would have three years from the adoption of new rules in this proceeding, including the grant of its application to extend its CGSA to include the Eastern half of the Gulf, to construct facilities and provide service.¹⁶ There is no basis for singling PetroCom out and granting them an additional three year build-out period for the Eastern half of the Gulf. The reason for the lack of build-out in the proposed Coastal Zone along the Florida coast is the unique characteristics of the Gulf in that area. There are simply no oil platforms on which the Gulf carriers can place cellular transmitters. If the Commission adopts Coastel's proposal to permit Gulf carriers to use land-based transmitters, without adopting the companion proposal to leave the entire GMSA as the Gulf carrier's CGSA, Coastel proposes that both Gulf carriers be given an additional build-out period during which time the Gulf carriers can make land-based transmitters operational.

¹⁶PetroCom Comments at 8, ¶ 21.

B. Land-Based Carriers' Contour Extensions into the Gulf Are and Must Remain Secondary to the Gulf Carriers' Service in the Gulf

One concern that is pervasive throughout the comments filed by the carriers in the land-based markets adjacent to the Gulf is that such carriers will be required to retract their extensions into the Gulf, preventing them from providing coverage to certain areas within their markets that they argue can only be covered by also extending into the Gulf. A similar concern expressed by these carriers is that the current freeze on the processing of applications by land-based carriers that propose extensions into the Gulf waters has complicated the ability of the land-based carriers to serve certain areas within their markets.

For example, Vanguard contends, in conclusory fashion, that in order to "pull back" its Florida-based extensions into the Gulf, it would have to take out of service approximately 10 cell sites or sectors, "representing millions of dollars in investment" and severely curtailing existing cellular service within the MSA and adjacent coastal areas.¹⁷ Southwestern Bell Mobile, also in a conclusory manner, claims that withdrawal of its existing extensions into the Gulf would require shutting down three sites and significantly reducing power in two others in one system, and significantly reducing power in one site responsible for between 12.5% and 16.47% of total traffic in two other systems.¹⁸ Neither carrier presents any supporting data for their conclusions.

¹⁷Vanguard Comments at 4, ¶ 5. Vanguard also makes the obviously incorrect assertion that existing extensions into the Gulf were approved by the Commission and have been incorporated into the cellular licensees' CGSAs.

¹⁸Southwestern Bell Mobile Comments at 4-5.

Palmer, on the other hand, refers to its Mexico Beach transmitter site, which is the subject of Special Temporary Authority ("STA"), as an example of a situation in which it has been unable to obtain permanent authority to meet demand because it cannot engineer a site at that location without an SAB extension into the Gulf.¹⁹ Palmer first obtained STA to operate a cellular transmitter at the Mexico Beach location in 1995, based on an extensive showing of emergency need resulting from the effects of Hurricane Hugo. Palmer's STA has been renewed on multiple occasions by the Commission without any additional rationale for continued STA being proffered by Palmer and without Commission inquiry into whether the emergency situation created by Hurricane Hugo continues now, over two years later. It would appear that instead of supporting the argument that land-based carriers should be allowed to have SAB extensions into the Gulf, Palmer's Mexico Beach STA example highlights the extent to which such carriers have already been able to extend into the Gulf while Gulf carriers have been denied reciprocal treatment into land-based markets.

Similarly, Texas 20B2 complains that it has been forced to configure its Matagorda Island cellular site in a way that limits it to providing service to only half of that island because it is not allowed to extend into the Gulf.²⁰ For starters, Texas 20B2 does not appear to be licensed for a cell site on Matagorda Island. Nonetheless, its failure to serve the entirety of that island

¹⁹Palmer Comments at 10-11.

²⁰Texas 20B2 Comments at 8. A review of Texas 20B2's Authorization for the Texas 20 - Wilson RSA (Market No. 671B) does not appear to include an authorized location on Matagorda Island. While Coastel acknowledges that "internal" cells need not appear on a carrier's authorization, it is difficult to imagine that a cell on Matagorda Island would not define Texas 20B2's CGSA and therefore have to be included on its authorization.

because of the Commission's de minimis extension rules is no different than a Gulf carrier's long-standing complaint that the prohibition against land-based transmitter sites without the consent of the affected land-based carrier frustrates the Gulf carrier's ability to serve the coastal areas within the Gulf.

As discussed above, land-based carriers uniformly seek to retain their de minimis extensions into the Gulf. Since the Commission has recently stopped processing applications by such carriers where they propose any extensions into the Gulf, the existing extensions were approved as de minimis prior to the implementation of such a policy. These carriers seem to forget that de minimis extensions, whether previously approved or the result of a consent agreement, are still secondary and subject to elimination when the extension area is served by the carrier whose market is the recipient of the extension.²¹ The fact that an extending carrier may have come to expect the benefits that result from any existing extension does not give that carrier any additional future rights to the extension.

These benefits come in two forms -- the ability to serve coastal traffic in the portion of the Gulf within the extension area and the ability to serve portions of its own land-based market that it could otherwise not serve without extending into the Gulf. It would turn reason on its head to conclude that because the public in these areas may have gotten used to receiving cellular service, the Commission should convert these **secondary** extensions into the Gulf into primary ones which cannot be displaced even by the cellular service provided by Gulf carriers.

²¹47 C.F.R. § 22.912.

If that were the case, then the entire basis for relegating such extensions to secondary status -- to give carriers co-channel protection within their own markets -- would be undermined.

There is no reasonable argument that extensions into the Gulf by land-based carriers should supersede the rights of the Gulf carriers to provide service within their own market. As to the land-based carrier's need to provide service in its own market through extensions into the Gulf, Coastel fully appreciates the land-carriers' position. However, as stated by the American Mobile Telecommunications Association, Inc.: "[I]n the cellular service, interested parties knew virtually from its inception that the Gulf of Mexico was considered a distinct, discrete geographic area within which specific entities were authorized to provide service."²² In addition, in 1988 the now defunct Mobile Service Division conclusively stated that: "Water areas were specifically excluded from MSA areas from the inception of cellular application licensing."²³ The land-based carriers knew, or should have known, when they placed their cell sites into operation that extensions into the Gulf are secondary to the Gulf carriers' coverage of the same area.

The land-based carrier's plight in this regard is no different than that of any land-based carrier, regardless of whether it neighbors land or water-based markets. The extension rule -- no extensions into CGSA without consent -- is of general applicability. In other words, if a land-based carrier expands its CGSA to include an area covered by a neighboring carrier's

²²Comments of the American Mobile Telecommunications Association, Inc. at 2.

²³Petroleum Communications, Inc., Memorandum Opinion and Order, 3 FCC Rcd 399, ¶ 5 (MSD 1988).

extension into its market, the extending carrier is required to withdraw its extensions, regardless of how long ago they were approved by the Commission.

In most cases, the Gulf extensions were approved at a time when the contours of land-based cell sites were depicted using a 39 dBu signal strength. Coastel's CGSA is the entire Gulf, and de minimis extensions into a CGSA are prohibited without the consent of the affected carrier; therefore it is unclear how the Commission allows the B-Block land-based carriers to extend into the Gulf at all without Coastel's consent. The Commission's move from a 39 dBu based to a 32 dBu based formula revealed that the extensions into the Gulf were even greater than originally thought. Yet the Commission has acquiesced in such extensions. If anything, as discussed below, the use of a propagation formula that properly considers propagation characteristics over water will show that such extensions are actually considerably larger than depicted by the existing land-based formula.

Despite the Commission's efforts to freeze the processing of applications by the land-based carriers for extensions into the Gulf, the Commission's proposal fails to address the fact that past de minimis extension rules have provided a considerable competitive advantage to land-based carriers. That advantage would be perpetuated under the Commission's proposal. The Commission's proposal, which provides for the inclusion in each carrier's CGSA of those parts of the Coastal Zone presently covered by extensions, allows land-based carriers to unfairly benefit from an earlier set of rules that favored them over the Gulf carriers.

C. A Hybrid Propagation Formula Is Not the Answer to the Problem That Radio Signals Propagate Differently Over Water Even If Transmitted By a Land-Based Antenna

The Commission's proposal for a uniform propagation methodology for SABs over water is also skewed in favor of land-based carriers. Since it is universally acknowledged that signals carry further over water than over land, any uniform methodology will favor land-based carriers. While the actual extension remains the same regardless of the propagation formula used, the choice of propagation formula is important in order to properly depict the "actual" extension that assists the carriers and the Commission in understanding actual operating conditions. As Palmer's Comments clearly demonstrate, actual service coverage of land-based carriers extends well in to the Gulf.²⁴

If the current Gulf formula is used for land-based cell sites that are near the Gulf or for those parts of the SABs of land-based cell sites that are over water, the extensions of the land-based carriers into the Coastal Zone will be shown to be much greater for purposes of determining whether there are unserved areas. If a different formula is adopted and applied to the Gulf carriers, their extensions into the Coastal Zone will shrink, while those of the land-based carriers will increase. The depiction of SAB extensions into the Gulf would, under the Commission's proposal, determine whether and to what extent there are "unserved" areas in the Coastal Zone.

²⁴Palmer Comments at 6. Palmer determined that predictable service was attained at approximately 20-25 miles offshore.